

COPY

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

2003 SEP 10 A 10: 11

IN THE MATTER OF ILEC UNBUNBLING )  
OBLIGATIONS AS A RESULT OF THE )  
FEDERAL TRIENNIAL REVIEW ORDER )

Docket No.

AZ CORP COMMISSION  
DOCUMENT CONTROL  
000004-03-0369

COMMENTS OF ESCHELON TELECOM, INC.

On June 24, 2003 the Arizona Corporation Commission ("Commission") issued a Procedural Order requesting comments on the Federal Communications Commission's ("FCC") Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 01-338.

Pursuant to that order, Eschelon Telecom, Inc. ("Eschelon") submits its comments regarding the process for implementation of the Triennial Review Order.

Eschelon is a facilities-based telecommunications company that is authorized by the Commission to provide switched intraexchange, interexchange and access telecommunications services. Eschelon provides voice and data services to small business customers in Arizona and utilizes UNEs, including unbundled loops and transport as well as UNE-P to do so. Eschelon consequently has a substantial interest in the issues raised in this proceeding.

The Order is lengthy and complex. Eschelon has not completed its review of the Order. While Eschelon submits these comments in response to the Commission's request for comments, Eschelon must reserve the right to further develop or alter its positions as the many issues and implications of the Order become more clear with additional study.

Issues

1. **What issues pertaining to the 90-day proceeding will need to be addressed as a result of the FCC's Order? Please describe any issues identified in detail.**

Eschelon does not serve business customers through unbundled local circuit switching on DS-1 loops. At this time, Eschelon does not expect to participate in the 90-day proceeding.

2. **Please provide substantive comments on the presumptive finding of no impairment for local circuit switching on high-capacity loops such as DS-1 for business customers.**

Please refer to answer in Question No. 1.

Arizona Corporation Commission  
DOCKETED

SEP 10 2003

DOCKETED BY	
-------------	---

3. **If there are other issues that the Commission must resolve within the 90-day time frame, please provide substantive comment on those issues as well.**

Please refer to answer in Question No. 1.

4. **For the 90-day proceeding, what process and schedule should the Commission use to implement the FCC's Triennial Review Order?**

Please refer to answer in Question No. 1.

5. **For the issues in the 90-day proceeding, please describe what you believe is, or should be, the procedural relationship between the 90-day proceeding involving the enterprise market and the nine-month proceeding for the "mass market".**

The nine-month DS0 unbundled switching proceeding should be entirely separate from the 90-day DS-1 unbundled switching proceeding. The FCC distinguished between enterprise customers served by DS1 capacity loops and unbundled switching from mass market customers served by DS0 capacity loops and unbundled switching.<sup>1</sup> The FCC found on a national level that CLECs are not impaired without access to unbundled local circuit switching at the DS1 level.<sup>2</sup> States may rebut this finding based on their review of specific operational and economic criteria.<sup>3</sup>

In contrast to DS1 switching, the FCC found that on a national level, CLECs are impaired without access to unbundled switching at the DS0 level.<sup>4</sup> State commissions are directed to undertake an analysis of a batch cut process, set rates for that process, evaluate two local switching triggers, collect evidence on actual switch deployment, and consider the transitional use of unbundled switching in addition to reviewing potential operational and economic barriers.

The two proceedings involve different markets in that distinct customer classes are involved. These markets may overlap to some extent geographically, but they are nonetheless different markets. The analyses required of state commissions for DS0 switching are more extensive and more complex than for DS1 switching and will require different and more extensive fact gathering. There is no reason to assume that combining the two proceedings will be more efficient in any respect than conducting separate proceedings.

Finally, Eschelon suspects that many CLECs are similar to Eschelon in that they purchase DS0 unbundled switching but do not purchase any DS1 unbundled switching. To the extent that the group of CLECs purchasing DS1 switching are

---

<sup>1</sup> Order at ¶ 419.

<sup>2</sup> Id. at ¶ 451.

<sup>3</sup> Id. at ¶¶ 456-57.

<sup>4</sup> Id. at ¶ 459.

distinct from, and likely fewer in number than, the CLECs purchasing DS0 switching, separate proceedings would be more efficient with respect to party resources.

In addition, while the Order also places a nine-month time frame for the Commission to address the availability of unbundled loops to a customer locations as well as transport along specific routes, the Order neither requires nor implies that unbundled switching, loop and transport impairment should be analyzed in the same proceedings. The Order prescribes very different analyses for determining evaluating impairment of these different UNEs.<sup>5</sup> CLECs have a variety of business plans and different CLECs use different UNEs in different locations. Neither the Commission nor the parties will be well-served by combining numerous unrelated issues together with numerous parties interested only in a subset of issues in a single proceeding.

6. **Are any rule changes required to the Arizona Administrative Code as a result of the FCC's Triennial Review Order? For the Issues in the 90-day proceeding, are any rulemaking proceedings advisable as a result of the FCC's Triennial Review Order?**

Please refer to answer in Question No. 1.

7. **Please comment on any other issues related to the 90-day proceeding you believe to be relevant to the ACC's implementation of the FCC's Triennial Review Order.**

Please refer to answer in Question No. 1.

8. **Should the Commission address all of the issues relating to the 90-day and 9 month proceedings within this docket?**

No, for the several reasons set out in the response to Question No. 5 above.

9. **Should the Commission use the same process you identified in response to Question No. 4 in both the 90-day and nine-month proceedings?**

As noted above, Eschelon does not plan on participating in the 90-day proceeding. Eschelon does intend, to the extent of its limited resources, to participate in the nine-month proceedings. As this Commission is aware, the National Association of Regulated Utility Commissioners convened a Triennial Review Implementation Project ("TRIP") Task Force to advise states on implementing the Order. The TRIP Task Force requested that Comptel, a trade association broadly representative of the CLEC community, coordinate drafting a joint CLEC response to a broad number of procedural and substantive questions relating to

---

<sup>5</sup> Compare e.g. 47 C.F.R. § 51.319(a)(4) (DS1 loops) and (d)(2) (DS0 capacity) (i.e., mass market) determinations.

both the 90-day and the 9-month proceedings. Eschelon directly participated in many of the drafting sessions relating to the 9-month proceedings, and also participated indirectly through its memberships in ALTS (Association for Local Telecommunications Services) and CWG (Competition Working Group) in developing the joint CLEC responses. Attached to these comments are the joint CLEC responses to the procedural and substantive questions raised by the Task Force which address 9-month proceedings. Eschelon supports the joint CLEC responses.

**10. Please indicate in which of the proceedings you intend to actively participate.**

At this time, Eschelon does not expect to participate in what is referred to as the 90-day proceeding based upon the nature of the proceeding as it has been described in the Triennial Review Order. Eschelon does intend to participate in the nine-month proceedings. Eschelon purchases transport and loop UNEs from Qwest in addition to DSO UNE-P and to the extent of its limited resources, Eschelon intends to participate in any proceedings affecting the availability of these UNEs.

Eschelon appreciates the opportunity to submit these comments to the Commission. Should the Commission or its Staff have any questions concerning this matter, please contact me directly.

Respectfully submitted,



J. Jeffery Oxley  
Executive Vice President  
and General Counsel  
Eschelon Telecom, Inc.  
(612) 436-6692 Telephone  
(612) 436-6792 Facsimile  
jjoxley@eschelon.com

TRIP Task Force Decision Point List – Substantive Issues – Nine Month Case  
**Response Supplied by CompTel on Behalf of Itself and Individual CLECs -- September 8, 2003**

Issue	Legal Standard from TRO or State Law	CLEC Position	Questions or Factors for State Commissions to Consider
<p>Must ILECs unbundle local circuit switching for mass market customers?</p>	<p>ILEC circuit switching for mass market customers must be unbundled (TRO ¶¶ 419, 459).                      “A requesting carrier is impaired when lack of access to an incumbent LEC network element poses a barrier or barriers to entry, including operational and economic barriers, which are likely to make entry into a market uneconomic.”</p>	<p>Yes. The FCC has made a national finding of impairment (TRO ¶¶ 419, 459) with regard to unbundled local switching used to serve mass-market customers, subject to a more granular review by the states. This threshold national finding was based principally on the operational and economic impediments that CLECs face from the hot cuts that they require when they attempt to use a non-ILEC switch. However, the FCC also recognized that CLECs face additional significant impediments that may make switch-based entry into the local mass market uneconomic. TRO ¶ 476.</p> <p>In order to eliminate the availability of local circuit switching as an unbundled network element (UNE) for mass-market customers at TELRIC rates, an ILEC must either demonstrate that certain FCC-defined “triggers” have been met (which the FCC finds sufficient to show that CLECs’ barriers to entry have been removed in a geographic market) or show that all material economic and operational barriers to entry into the mass market through the use of non-UNE switching have been eliminated.</p> <p>Economic barriers the FCC recognizes include, among other things, sunk costs, scale economies, scope economies, absolute cost advantages, capital requirements, ILEC strategic behavior, product differentiation, long term contracts and network externalities. TRO ¶ 75. Such barriers create impairment if, taken as a whole, they are likely to make market entry uneconomic in the absence of the use of an unbundled network element at cost-based TELRIC rates.</p>	<p>For the relevant product market in each geographic market, can ILEC overcome presumptive finding of impairment by showing that economic and operational barriers to entry have been removed? Economic barriers may include the need for access to capital, lack of first-mover advantage, and other entry and exit barriers. Operational barriers may include lack of access to high capacity loops delivered in an accurate and timely way, lack of an accurate and timely loop migration process (including software, hardware, and other aspects of a “coordinated hot cut,” for example), and lack of accurate and timely information regarding, for example, loop availability and loop migration.</p>

TRIP Task Force Decision Point List – Substantive Issues – Nine Month Case  
 Response Supplied by CompTel on Behalf of Itself and Individual CLECs – September 8, 2003

Issue	Legal Standard from TRO or State Law	CLEC Position	Questions or Factors for State Commissions to Consider
		<p>Operational impairment is also significant in the mass market, in which customers are served by voice-grade loops. Such impairment includes, but is not limited to, the ILECs' failure to unbundle the IDLC network, lack of a scalable, dynamic or efficient hot cut process, lack of pre-order processes to handle large scale dynamic coordinated ordering processes, and lack of processes to ensure repair/maintenance, customer reconciliation, and related issues that ensure that customers can switch seamlessly between providers. CLECs also suffer additional operational barriers, including the fact that voice competitors' ability to engage in line-splitting with non-affiliated data service providers is significantly more limited if they are forced to use a UNE-Loop (UNE-L) arrangement instead of one that is based on the use of ILEC switching, <i>i.e.</i>, in the same manner that ILECs provide bundled voice and data services today.</p> <p>Further, with regard to Bell operating companies, unbundled switching is a section 271 "competitive checklist" item. The effects of these requirements are discussed below in Procedural Question 13.</p>	
<p><b>I. Definition of Market</b>  <b>IA. Product Market</b>                      IA.1. What products and technologies are available as a substitute for ILEC local circuit switching?</p>		<p>The product market defined by the FCC is voice service provided to mass-market customers, which today is served virtually entirely by local circuit switching. There are few available substitutes for ILEC local circuit switching. The lack of</p>	<p>Factors to consider:</p> <ul style="list-style-type: none"> <li>• Switch capacity, scalability, and upgradeability</li> <li>• Availability and functionality of features</li> <li>• Vendor constraints</li> </ul> <p>- hardware manufacturing schedule and capacity</p>

TRIP Task Force Decision Point List – Substantive Issues – Nine Month Case  
 Response Supplied by CompTel on Behalf of Itself and Individual CLECs -- September 8, 2003

Issue	Legal Standard from TRO or State Law	CLEC Position	Questions or Factors for State Commissions to Consider
		<p>substitutes results in large part from the additional economic and operational disadvantages competitors face in attempting to <i>combine</i> ILEC loops and non-ILEC switches (of any type) to provide a complete retail service.</p> <p>Given the integrated nature of the circuit-switched network architecture currently deployed by incumbent ILECs, only ILECs have cost-efficient and operationally simple access to their monopoly loops. As a result, there are effectively no products or technologies that provide competitors with a viable substitute for ILEC local circuit switching to serve mass-market customers. Indeed, if these barriers did not exist, significant facilities-based competition and/or wholesale sources of supply would develop – but market experience shows that such sources do not exist today.</p> <p>Accordingly, a simple inventory of the non-ILEC supplied switching hardware and software that a competitive carrier would need in order to provide switch-based service to mass-market customers is at best of minimal value in assessing economic and operational impairment. Rather, the FCC recognizes that the best evidence regarding impairment is the actual use of alternative facilities to provide service to identified customer groups. TRO ¶ 461. Thus, the lack of significant use of alternative switches to serve mass-market customers is particularly indicative of impairment. TRO n.1365 (CLECs' failure to use already-deployed switches to serve mass-market customers "bolsters our findings that significant barriers caused by hot cuts and other factors make entry</p>	<p>constraints</p> <ul style="list-style-type: none"> <li>- software programming schedule and capacity constraints</li> <li>- vendor budgetary and fiscal constraints</li> </ul> <p>Is it appropriate to consider switches other than traditional local circuit switches, such as "soft switches"? If so, what economic and operational barriers are presented by the use of "soft switches"?</p>

TRIP Task Force Decision Point List – Substantive Issues – Nine Month Case  
 Response Supplied by CompTel on Behalf of Itself and Individual CLECs -- September 8, 2003

Issue	Legal Standard from TRO or State Law	CLEC Position	Questions or Factors for State Commissions to Consider
		<p>uneconomic”).</p> <p>Non-ILEC switches are not substitutes for mass-market ILEC switching because when they interface with an ILEC network using traditional analog network architecture and technology, CLECs, unlike ILECs, must manually connect and extend the loop of every customer they serve to a <i>different location</i> than the ILEC switch using economically and operationally inefficient facility arrangements. ILEC switches are already connected to their customers’ loops at the central office, typically with nothing more complex than a short cross-connect wire (or “jumper”) that, once connected, is generally never moved again. As a result, the existing ILEC networks have an “integrated” network architecture that allows them -- and them alone -- to maximize the joint economic and operational efficiencies of using loops and switching to provide service to mass-market customers.</p> <p>Because of the ILECs’ integrated network architecture, CLECs cannot connect their customers’ loops to their switches without incurring significant additional costs and operational impairments. These include, but are not limited to, the costs of (1) collocation, (2) collocated equipment needed to digitize, concentrate and multiplex the signals carried by their customers’ loops, (3) transport backhaul, and (4) manual hot cuts required to transfer ILEC loops to a CLEC’s network. In addition, (5) CLECs also face additional costs vis-à-vis ILECs because they cannot terminate calls as efficiently as ILECs. Indeed, if ILEC local switching were</p>	

TRIP Task Force Decision Point List – Substantive Issues – Nine Month Case  
**Response Supplied by CompTel on Behalf of Itself and Individual CLECs -- September 8, 2003**

Issue	Legal Standard from TRO or State Law	CLEC Position	Questions or Factors for State Commissions to Consider
		<p>not available as a UNE, ILEC networks would need to be redesigned to respond to the consequences of shifting traffic from efficient shared transport facilities to less efficient, tandem-dependent interconnection trunks. In addition, there is no doubt that CLECs also must suffer the operational disadvantages described above.</p> <p>These barriers are not only faced by CLECs that seek to self-provide their own switching, but they are also faced by any carrier that seeks to use wholesale alternatives or to deploy alternative wholesale switching for other CLECs. These additional costs and operational impairments apply with respect to every customer a competitive carrier seeks to serve, and they are the principal reason why there is such limited use of alternative switches to serve mass-market customers.</p> <p>Further, cable providers, whose ability to offer service is based on their ability to leverage off their cable monopolies, do not offer their services or facilities to others carriers for resale. TRO ¶ 446. Thus, the existence of a facilities-based cable provider in a geographic market is not especially probative of whether a non-cable competitor could economically serve the mass market without access to unbundled ILEC switching. TRO n.1560.</p> <p>Moreover, cable companies that offer voice telephony (or providers that utilize cable plant for distribution) generally do not serve the entire "mass market" in an area, as their service is limited to franchise areas where their facilities exist, and they typically serve only residential customers. Therefore, cable operators that offer telephony</p>	

**TRIP Task Force Decision Point List – Substantive Issues – Nine Month Case  
Response Supplied by CompTel on Behalf of Itself and Individual CLECs -- September 8, 2003**

Issue	Legal Standard from TRO or State Law	CLEC Position	Questions or Factors for State Commissions to Consider
		<p>generally would not qualify under the "trigger" criteria in the TRO.</p> <p>Moreover, the TRO (§ 445 &amp; n.1549) correctly finds that wireless "is not yet a suitable substitute for local circuit switching," because wireless does not provide service that is equal in quality, ubiquity and broadband/data functionality.</p> <p>"Soft switches" (packet switches) may at some point serve as a substitute for circuit switches, but not today, because nearly all of the operational issues associated with the use of circuit switches are also applicable to soft switches. Today, CLECs achieve virtually nothing in the way of increased efficiency and reduced impairment by converting their networks to packet switching, even if such technologies were sufficiently reliable and feature-rich to operate as carrier-class, end office switches. For example, even if a CLEC had a full-featured soft switch collocated in an ILEC central office, it would have to (1) lease collocation space (possibly more than is necessary to house the DLC equipment needed to provide circuit switch-based service); (2) purchase and install equipment that would (a) packetize its customers' signals before entering the soft switch and (b) translate the signals coming out of the soft switch to traditional time division multiplexed digital format before they enter the public switched network; and (3) arrange and incur the costs for a hot cut to transfer each customer's loop to its collocation. Thus, deployment of soft switches in the ILECs' current network architecture would not have any meaningful effect on the economic and operational impairments that</p>	

TRIP Task Force Decision Point List -- Substantive Issues -- Nine Month Case  
 Response Supplied by CompTel on Behalf of Itself and Individual CLECs -- September 8, 2003

Issue	Legal Standard from TRO or State Law	CLEC Position	Questions or Factors for State Commissions to Consider
<p>IA.2. Is there a <u>stand-alone</u> market for local circuit switching or switching functions?</p>		<p>CLECs currently suffer with respect to mass-market customers.</p> <p>The TRO (¶ 504) requires an examination of wholesale alternatives to ILEC circuit switching in the relevant market. However, market experience demonstrates that a true wholesale market for local switching that is structured to support dynamic competition for mass-market customers does not exist. (See TRO ¶ 504) This is because the entry barriers that self-provisioning CLECs face also block the development of vibrant wholesale sources of supply. Because of the integrated nature of the ILECs' existing network architecture, as described above, there is no wholesale market today for local circuit switching to serve mass-market customers. And critically, there is no prospect for the development of such a market as long as the ILECs maintain their current network architecture, which requires CLECs to extend each and every customer's loop to reach <i>any</i> non-ILEC switch and also to incur a hot cut on each of their customers' loops.</p> <p>Critically, it is not significantly less expensive for one CLEC to link its switch to unbundled ILEC loops than for another to do so -- all must use the same hot cut, collocation, digitization, concentration and backhaul methodology. Indeed, the lack of a wholesale market for switching to serve mass-market loops directly demonstrates the effects of the integrated nature of the ILECs' networks and that a simplistic review of the existence of non-ILEC switches cannot be dispositive as to whether CLECs are impaired in the mass market without access to unbundled</p>	<p>Is it assumed that CLECs will provide UNE local switching to each other, or only that the installation of a switch(es) by one CLEC means that at least one other CLEC will also install at least one switch of its own?</p>

TRIP Task Force Decision Point List – Substantive Issues – Nine Month Case  
 Response Supplied by CompTel on Behalf of Itself and Individual CLECs -- September 8, 2003

Issue	Legal Standard from TRO or State Law	CLEC Position	Questions or Factors for State Commissions to Consider
		<p>ILEC circuit switching.</p> <p>Finally, the absence of a market for mass-market switching also means that carriers have not yet begun to address the OSS that would be needed to enable (1) one CLEC to offer mass-market switching to another CLEC and (2) an ILEC to process orders from one CLEC to implement a manual hot cut to a separate CLEC's switch. Thus, a mere "offer" to provide wholesale services to carriers seeking to serve mass market customers cannot be dispositive as to whether wholesaling is actually available in a market. Rather, a putative wholesaler must demonstrate that it is operationally ready to provide such services and that both it and the ILEC have procedures in place that enable a carrier purchasing an ILEC voice grade loop to provide service of equivalent quality using another carrier's switch.</p>	
<p><u>IB. Geographic Market</u></p>		<p>The TRO (§ 495) requires state commissions to establish the geographic markets that they will use to make their review of impairment with respect to mass-market switching. The TRO lists a number of both demand-side and supply side factors that a state commission should assess in making that determination, including, (i) the locations (if any) where customers are actually being served by competitors; (ii) the variation in factors affecting competitors' ability to serve each group of customers; (iii) competitors' ability to target and serve specific markets economically and efficiently using available technologies; and (iv) how competitors' ability to use self-provisioned switches or wholesalers to serve various groups of customers varies geographically. States may not</p>	<p>Possible boundaries to consider:</p> <ol style="list-style-type: none"> <li>(1) LATA</li> <li>(2) Minimum or typical ILEC service area "unit" (e.g., exchange, wire center, rate center)</li> <li>(3) Minimum or typical CLEC service area "unit," if any</li> <li>(4) MSA</li> <li>(5) Performance measurement geographic disaggregation area</li> <li>(6) Entire state</li> </ol> <p>Questions to Consider:</p> <ul style="list-style-type: none"> <li>• May some geographic markets be combined for certain impairment "sub-analyses" (for example, perhaps certain ILEC OSS availability issues could be addressed on a</li> </ul>

TRIP Task Force Decision Point List -- Substantive Issues -- Nine Month Case  
 Response Supplied by CompTel on Behalf of Itself and Individual CLECs -- September 8, 2003

Issue	Legal Standard from TRO or State Law	CLEC Position	Questions or Factors for State Commissions to Consider
		<p>define a market so narrowly that a competitor serving that market alone would not be able to take advantage of a available scale and scope economies from serving a wider market. Overall, states are given discretion in this regard, and the TRO does not require any particular result, except that the market may not include the entire state. The geographic markets the state commissions define are to be used for all of their analysis. TRO ¶ 495.</p>	<p>statewide market basis), while other impairment sub-analyses are conducted separately for each identified geographic market (for example, perhaps accuracy and timeliness of loop delivery varies for each geographic market in a given state) ?</p> <ul style="list-style-type: none"> <li>• How should the need for precise results in particular disaggregated geographic areas be balanced with the need for an expedited process to meet the FCC's 9 month deadline?</li> </ul>
<p><b>II. Inventory / Existing Product Availability</b></p>		<p>In order to conduct the threshold "trigger" analysis the FCC defines (TRO ¶¶ 498-505), state commissions will have to conduct an inventory of non-LEC switches that are deployed in their jurisdictions. Data collected on switching should be collected from each switch provider, including the ILECs. In particular, state commissions should not rely solely on data provided by the incumbents because of their obvious incentives to overstate the amount of competitive switching that is deployed.</p> <p>However, application of the trigger analysis is not a simple task of merely counting CLEC switches. The state commissions will need to examine the uses of the CLEC switches to determine whether such switches are effectively providing service to "mass market" customers in the relevant geographic area. Specifically, the TRO (¶ 499) establishes the criteria that state commissions must use in determining whether any particular competitive switch provider qualifies as a "self-provider" or "wholesaler." Each qualifying self-provider:</p>	<p>In order to more accurately determine impairment without access to a particular ILEC UNE, a State Commission may want to conduct an "inventory" to determine the availability of that ILEC UNE and of its substitutes.</p> <p>An inventory could include the following for each LEC in each geographic market:</p> <ol style="list-style-type: none"> <li>(1) number and location of LEC switches and switch substitutes;</li> <li>(2) capacity, utilization, and availability of each switch or switch substitute;</li> <li>(3) distance of each CLEC switch or switch substitute from its interconnected ILEC switch;</li> <li>(4) number of LEC lines provisioned/served by each switch/switch substitute; and</li> <li>(5) number of line and trunk ports on each LEC switch/switch substitute in that area -- both actual and potential working ports.</li> </ol> <p>The inventory could be further disaggregated to separate stand-alone CLEC switches from physically or virtually collocated CLEC</p>

TRIP Task Force Decision Point List – Substantive Issues – Nine Month Case  
 Response Supplied by CompTel on Behalf of Itself and Individual CLECs -- September 8, 2003

Issue	Legal Standard from TRO or State Law	CLEC Position	Questions or Factors for State Commissions to Consider
		<p>Must be unaffiliated with the ILEC and any other provider;</p> <p>Must be using or offering its own separate switch;</p> <p>Must be actively providing voice service to mass market customers in the market;</p> <p>Must be operationally ready and willing to serve <i>all</i> customers in the designated market, which includes both residential and small business customers; and</p> <p>Must be capable of economically serving the <i>entire</i> market, thus excluding switch providers "that provide services that are desirable only to a particular segment of the market."</p> <p>Each qualifying wholesaler:</p> <p>Must actively be providing voice service used to serve the mass market; and</p> <p>Must be providing service at a cost and quality and geographic scope that allow resellers to serve the entire market.</p> <p>In sum, such providers must be currently offering and able to provide service, and likely to continue to do so. TRO ¶ 500.</p> <p>In order to meet these triggers, the state commission must find that there are at least 3 self-</p>	<p>switches/switch substitutes.</p> <p>Questions to consider:                      When should a switching inventory be conducted? If done periodically in the future, how often?</p> <p>Can/should all LECs be required to provide all relevant data? Is it sufficient to rely solely on data provided by the LECs? What other data sources are available? Is it sufficient to consider only publicly available data? Can/should LECs be required to obtain and provide data from third parties?</p> <p>States may also want to consider the following non-switch subjects for inventory:</p> <ul style="list-style-type: none"> <li>• Collocation (both physical and virtual) – availability, rates, terms and conditions</li> <li>• Alternative means of gaining access to loops – availability, rates, terms and conditions.</li> <li>• Interoffice transport.</li> </ul>

**TRIP Task Force Decision Point List – Substantive Issues – Nine Month Case  
Response Supplied by CompTel on Behalf of Itself and Individual CLECs -- September 8, 2003**

Issue	Legal Standard from TRO or State Law	CLEC Position	Questions or Factors for State Commissions to Consider
		<p>provisioning carriers (TRO ¶ 501) or 2 wholesalers (TRO ¶ 504) that meet these qualifications in a geographic market.</p> <p>In analyzing whether either of the triggers are met, state commissions must be mindful of the FCC's requirement that to qualify, a triggering carrier must be ready, willing and able to serve the "entire" mass market. Switch-based carriers that only chose to serve a portion of the market (e.g., customers with voice and data lines or customers only within a particular neighborhood, apartment complex, or cable franchise boundary) do not qualify. That requirement is appropriate, because the purpose of the "trigger" inquiry is to assure that there are viable competitive alternatives to the ILEC's facilities in the entire defined market, from both a geographic and customer perspective.</p> <p>Unless the FCC-defined triggers are met, a simple review of non-ILEC switching is of little value in determining impairment in the mass market, because, as discussed above, the economic and operational impairments CLECs suffer will continue to exist regardless of whether or not there are non-ILEC switches in place.</p> <p>Moreover, certain information about how CLECs actually use their deployed switches will provide an indication of the impairments that CLECs suffer with respect to mass-market loops. However, any "inventory" need not be excessively detailed and in all events should not be burdensome on carriers.</p>	

The relevant facts to collect must relate to the

TRIP Task Force Decision Point List – Substantive Issues – Nine Month Case  
 Response Supplied by CompTel on Behalf of Itself and Individual CLECs -- September 8, 2003

Issue	Legal Standard from TRO or State Law	CLEC Position	Questions or Factors for State Commissions to Consider
		<p>product that is being evaluated, i.e., "mass market services." Therefore, relevant inventory information would include:</p> <p>The number POTS lines equipped on the circuit switch for mass-market customers.</p> <p>The generic and feature software packages installed on each circuit switch.</p> <p>The number of unbundled analog loops connected to each out-of-region ILEC switch in the prior quarter and prior year.</p> <p>The percentage of ILEC analog loops connected to wholesale switch ports.</p> <p>The ongoing, continuing ability of the carriers owning each circuit switch to provide service to analog loops connected to that switch.</p> <p>The service mix (<i>i.e.</i>, analog loops, DS-1 end-user services, and digital connections to ISPs) of each CLEC switch.</p> <p>These data will show that CLEC switches are used predominantly to serve enterprise customers with the largest telecommunications needs.</p> <p>Finally, the state commissions should provide adequate and appropriate confidentiality protection for the carrier specific information it collects and also for collections of information that could affect network and/or homeland security.</p>	
III. Economic impairment			

TRIP Task Force Decision Point List – Substantive Issues – Nine Month Case  
 Response Supplied by CompTel on Behalf of Itself and Individual CLECs -- September 8, 2003

Issue	Legal Standard from TRO or State Law	CLEC Position	Questions or Factors for State Commissions to Consider
<p>III. Economic impairment</p>		<p>product that is being evaluated, i.e., "mass market services." Therefore, relevant inventory information would include:</p> <ul style="list-style-type: none"> <li>The number POTS lines equipped on the circuit switch for mass-market customers.</li> <li>The generic and feature software packages installed on each circuit switch.</li> <li>The number of unbundled analog loops connected to each out-of-region ILEC switch in the prior quarter and prior year.</li> <li>The percentage of ILEC analog loops connected to wholesale switch ports.</li> <li>The ongoing, continuing ability of the carriers owning each circuit switch to provide service to analog loops connected to that switch.</li> <li>The service mix (<i>i.e.</i>, analog loops, DS-1 end-user services, and digital connections to ISPs) of each CLEC switch.</li> </ul> <p>These data will show that CLEC switches are used predominantly to serve enterprise customers with the largest telecommunications needs.</p> <p>Finally, the state commissions should provide adequate and appropriate confidentiality protection for the carrier specific information it collects and also for collections of information that could affect network and/or homeland security.</p>	

TRIP Task Force Decision Point List – Substantive Issues – Nine Month Case  
 Response Supplied by CompTel on Behalf of Itself and Individual CLECs -- September 8, 2003

Issue	Legal Standard from TRO or State Law	CLEC Position	Questions or Factors for State Commissions to Consider
<p>III.A. <u>General methodology</u> questions</p>		<p>The TRO establishes a multi-step process for the state commissions' review of impairment during the nine-month period provided in the FCC's Order.</p> <p>States must conduct the "trigger" analysis described in response to II. above. If either of the triggers is met, CLECs are to be deemed not impaired in the applicable geographic market.</p> <p>If the triggers are not met, states must conduct a holistic impairment analysis, as described in paragraphs 506-521 of the TRO. Those sections provide that state commissions review evidence of three types. First, they are to review actual competitive deployment of local circuit switches, including the deployment of switches used to serve enterprise and mass-market customers, and if the prescribed standards are met, to accord prescribed weight to such evidence in the overall analysis. However, such evidence is not dispositive.</p> <p>The remainder of the impairment analysis, i.e., whether entry without access to unbundled local switching is "uneconomic" requires states to examine operational barriers (TRO ¶¶ 511-514) and economic barriers (TRO ¶¶ 515-520) that competitors face in attempting to provide service using alternative switches. With respect to economic barriers, state commissions are to review the potential revenues available to, and the associated costs incurred by, competitive carriers in a given market if they do not have access to unbundled switching. TRO ¶¶ 519, 520. Notably, the TRO (¶ 520) states that state commissions "should pay particular attention to the impact of</p>	<p>Can/should economic impairment determinations be made on a CLEC-by-CLEC basis? That is, can one CLEC be economically impaired but another CLEC not be economically impaired? Does the answer change for particular types of UNEs (e.g., switches, loops, transport) or for particular geographic markets?</p> <p>What costing methodology(ies) should be used to determine economic impairment for CLECs? What types of costs should be considered? What types of costs should not be considered?</p> <p>Should any LEC(s) be required to file a cost study to demonstrate that economic impairment or non-impairment exists? Yes or no? If yes, who/which LEC(s)?</p> <p>Cost study factors to consider:                      (1) Investment and financing costs                      (2) Cost of transport facilities                      (3) Relative CLEC and ILEC cost structures                      (4) Relative CLEC and ILEC (in)efficiency</p>

TRIP Task Force Decision Point List – Substantive Issues – Nine Month Case  
 Response Supplied by CompTel on Behalf of Itself and Individual CLECs -- September 8, 2003

Issue	Legal Standard from TRO or State Law	CLEC Position	Questions or Factors for State Commissions to Consider
		<p>migration and backhaul costs on competitors' ability to serve the market." These are the very costs described in the responses to I.A.1 and I.A.2 above.</p> <p>The analysis must be conducted on a "hypothetical" efficient CLEC basis, not on an individual CLEC basis. That analysis must also consider how sunk costs and competitive risks affect the likelihood of entry. TRO ¶ 517.</p> <p>In addition, states are required to take three other actions.</p> <p>First, because the FCC finds that the operational and economic barriers related to hot cuts are so significant, it asks the states to define a "batch hot cut" process that <i>might</i> improve the performance and reduce the costs of hot cuts. TRO ¶¶ 487-490. Because the physical processes used to perform hot cuts are typically developed by ILECs on a company-wide (or at least multi-state regional) basis, this may be an area in which some state commission collaboration would be appropriate, whether formal or informal. However, the establishment of TELRIC rates for the batch process and the testing of the ILEC's performance in each state should remain within the province of each state commission.</p> <p>Second, if, at the conclusion of the impairment analysis described above, a state commission determines that CLECs remain impaired, the state must consider whether the impairments are alleviated by the use of a "rolling" use of UNE-P for customer acquisition purposes. TR ¶ 521-</p>	

TRIP Task Force Decision Point List – Substantive Issues – Nine Month Case  
 Response Supplied by CompTel on Behalf of Itself and Individual CLECs -- September 8, 2003

Issue	Legal Standard from TRO or State Law	CLEC Position	Questions or Factors for State Commissions to Consider
		<p>524.</p> <p>Finally, states are asked within the context of the nine-month review to establish a line limit for the number of voice-grade lines per location that define the mass market. TRO ¶ 497</p> <p>State commissions should also be mindful of the fact that they will be making the “potential self-provisioning” analysis <i>after</i> finding that significant actual competition does not exist. Moreover, the TRO requires state commissions, by definition, to analyze a “hypothetical” state of competition that does not exist in the state, but state regulators will be making decisions that impact real-world services and existing customers. Further, it is reasonable to assume that if operational and economic barriers to switch-based entry were in fact removed, such entry would occur. Thus, although such evidence is not fully dispositive, the absence of actual entry is a strong indication that substantial barriers to entry still remain in the market. As a result, eliminating unbundled access to ILEC local switching will have the likely effect of denying competition to most, if not all, of the mass market consumers in the entire defined market.</p>	
<p>IIIB. To what extent are CLECs impaired due to the level of (or lack of) actual or potential switch deployment?</p>		<p>See response to IIIA.</p> <p>Although the FCC has required states to examine evidence of actual deployment of competitive local switching, the presence of some niche providers in small geographic areas offering some services only to subsets of mass-market customers does not</p>	<p>Is a finding of economic impairment (maintaining the presumption) mandated at or below a particular level of actual deployment of CLEC switches of a given capacity?</p> <p>Is a finding of no economic impairment (overcoming the presumption) mandated at or</p>

TRIP Task Force Decision Point List – Substantive Issues – Nine Month Case  
**Response Supplied by CompTel on Behalf of Itself and Individual CLECs -- September 8, 2003**

Issue	Legal Standard from TRO or State Law	CLEC Position	Questions or Factors for State Commissions to Consider
		<p>constitute significant evidence of lack of impairment. Moreover, the presence of CLECs that provide service to enterprise customers using their own switching is not indicative that CLECs can operationally use that switching to provide service to the mass markets even with an effective “batch” hot cut process, unless and until the “batch” process can handle significant volumes of hot cut transactions seamlessly, between ILEC and CLEC and between CLEC and CLEC, with any type of ILEC loop. And the potentially lower hot cut charges relating to such a process affect only one of many factors in the economic analysis.</p>	<p>above some other particular level of actual deployment of CLEC switches of a given capacity?</p> <p>Should potential or prospective switch deployment be considered? If so, what are the criteria for considering the likelihood of any potential or prospective switch deployment – e.g., proof of financing, proof of vendor contract(s)?</p>
<p><b>III.C. Transport issues in an economic impairment analysis</b>  <b>III.C.1. What types of traffic do the CLECs need to be able to route between switches (either ILEC or non-ILEC)?</b></p>		<p>CLECs require the ability to route all intra-LATA traffic on the incumbent’s network when purchasing unbundled local switching, just as the ILEC does. The ILEC designs its interoffice network to achieve scale economies based on all traffic it handles including intra-LATA traffic, and the nondiscrimination requirements of the Act require that CLECs that use unbundled local switching share these economies. Accordingly, CLECs are properly permitted to use ILEC shared transport when they are entitled to unbundled local switching. The TRO (¶ 534) directs state commissions to take shared transport costs into account in identifying impairment for unbundled switching.</p> <p>In addition, CLECs often face higher interoffice costs than the ILEC when they handle calls using their own switches. This is in part because ILEC switches have a much higher percentage of</p>	<p>What types of transport does the ILEC currently make available to CLECs (e.g., dedicated, common, direct, shared, other)? Do the results of the impairment analysis vary depending upon the type of transport involved?</p>

TRIP Task Force Decision Point List – Substantive Issues – Nine Month Case  
 Response Supplied by CompTel on Behalf of Itself and Individual CLECs -- September 8, 2003

Issue	Legal Standard from TRO or State Law	CLEC Position	Questions or Factors for State Commissions to Consider
		<p>intraswitch calls (which require no transport at all) and because CLECs face higher costs when they must move calls from their switches to those of other carriers, including ILECs, wireless carriers and other CLECs. These are all higher costs that CLECs face when they provide service using their own switches and must be considered in the impairment analysis.</p> <p>In addition, the TRO has redefined local dedicated transport to exclude facilities between ILEC offices and CLEC offices. If CLECs are required to pay higher special access rates (which are substantially above cost) to route traffic from their customers to their switches, their backhaul costs to provide service will be greater and must be accounted for in any economic analysis. Moreover, as a general rule, special access services obtained from the incumbent are the only routinely available, ubiquitous transport facilities and, as such, should be used as the benchmark to determine whether transport costs impair carriers' ability to aggregate loops at remote locations in order to compete.</p> <p>In addition to the CLECs' cost of interoffice transport, the total cost of forcing traffic "off-switch" would also include the ILECs' additional costs to receive substantial amounts of local traffic through interconnection trunks, which are frequently switched through local tandem facilities. Moving traffic from efficiently designed shared transport facilities, which directly route traffic between end offices with high communities of interest, to less efficient interconnection trunks that require tandem routing reduces the overall</p>	

TRIP Task Force Decision Point List – Substantive Issues – Nine Month Case  
 Response Supplied by CompTel on Behalf of Itself and Individual CLECs -- September 8, 2003

Issue	Legal Standard from TRO or State Law	CLEC Position	Questions or Factors for State Commissioners to Consider
		<p>efficiency of the local network and results in higher costs. These additional costs must also be considered in determining impairment. The FCC has recently determined that inefficiencies in tandem interconnection can competitively damage CLECs. See IV.A below.</p>	
<p>IIIC.2. What types of restrictions, if any, is the ILEC legally permitted to place on the availability of unbundled transport to CLECs or on the types of traffic that a CLEC is allowed to carry over UNE transport facilities obtained from the ILEC?</p>		<p>The TRO (¶ 579) eliminated the prior restrictions on commingling of UNEs and wholesale or other services. The Order also imposed a new set of service eligibility criteria for the use of EELs. TRO ¶¶ 590 et seq. The economic impact, if any, of these rule changes on the economics of serving mass-market customers has not been quantified. However, since all of the costs of using such facilities are part of the CLECs' backhaul costs, they will be part of the economic impairment analysis.</p> <p>See responses to III.C.1&amp;2 above.</p>	<p>Does the ILEC currently place restrictions on what types of traffic a CLEC may carry over transport facilities obtained from the ILEC? If yes, could these restrictions affect the demand levels for UNE transport and/or the existence or level of impairment?</p> <p><u>Shared Transport</u> – For example, in the context of shared transport, can/should/must the CLEC be allowed to send intraLATA traffic over ILEC-provided shared transport facilities?</p> <p>Who owns/provides the transport? CLEC self-supply or provided by another carrier? If provided by another carrier (ILEC or other?), are there any relevant interconnection issues or disputes?</p> <p>What relationship, if any, exists between a CLEC's need for transport and the number, location, and capacity of its switches (whether collocated or not): How will that relationship affect the CLEC's ability to send and receive traffic?</p> <p>Factors to consider:</p> <ul style="list-style-type: none"> <li>• Availability, terms, conditions, and prices for transport, including all forms of EELs.</li> </ul>
<p>IIIC.3. To what extent are CLECs impaired due to the availability, capacity, price, terms, and conditions (or lack thereof) of interoffice transport to economically allow CLECs to route traffic?</p>			

TRIP Task Force Decision Point List – Substantive Issues – Nine Month Case  
 Response Supplied by CompTel on Behalf of Itself and Individual CLECs -- September 8, 2003

Issue	Legal Standard from TRO or State Law	CLEC Position	Questions or Factors for State Commissions to Consider
<p>IIID. To what extent are CLECs impaired due to a lack of <u>access to capital</u>?</p>		<p>Capital constraints are a significant concern for all competitive carriers. See TRO ¶¶ 86, 88. The press is replete with references to the fact that capital markets for CLEC expansion have been extremely tight for the past several years and that capital (internal or external) is and will continue to be largely unavailable to competitive providers for the foreseeable future, unless they can demonstrate the likelihood of achieving profitability in the very short term. This requires that capital be reserved for only the highest revenue generating services, <i>i.e.</i>, services for enterprise customers and new broadband services. Thus, there is no reasonable prospect that, in today's marketplace, there is significant capital available to support new infrastructure for voice services, especially voice services for mass-market customers.</p> <p>Moreover, to the extent that such capital may exist (even hypothetically), CLECs' cost of capital (equity and debt) is substantially higher than that for the ILECs. This is because (1) the risks associated with such new businesses mean that the cost of equity/debt (if available at all) is higher for competitive carriers, (2) the raft of competitive carrier bankruptcies makes the likelihood of obtaining significant equity financing remote, and (3) CLEC capital is now limited to more expensive private, as opposed to public, equity markets. Consequently, there is no reason to believe that if access to unbundled switching for mass-market customers were no longer available that competitors would convert UNE-P customers to a UNE-L architecture. Rather, the most probable scenario would be that competitors would either exit the market or be forced to raise rates to a level</p>	<p>Factors to consider:</p> <ul style="list-style-type: none"> <li>• Type of financing (equity, debt, or other)</li> <li>• Cost of capital (CLEC vs. ILEC)</li> </ul>

TRIP Task Force Decision Point List – Substantive Issues – Nine Month Case  
 Response Supplied by CompTel on Behalf of Itself and Individual CLECs -- September 8, 2003

Issue	Legal Standard from TRO or State Law	CLEC Position	Questions or Factors for State Commissions to Consider
<p>III. To what extent are CLECs impaired due to <u>first-mover advantages</u>?</p>		<p>that would effectively generate the same result.</p> <p>The ILECs' "first-mover advantages" take several forms and include the "sunk cost" advantages of deploying a network as a monopoly protected by government regulations. The ILECs' first-mover advantages also include the benefit they obtained from inheriting their customer base without incurring customer acquisition costs or substantial advertising costs, and the brand recognition and preference the ILECs' monopoly status has generated. See TRO n.249. These advantages also include the continuing advantage of a legacy architecture in which loop facilities are integrated with switching plant.</p> <p>CLECs face substantial entry barriers because of the incumbents' first mover advantages. Because the ILECs' local networks were built as subsidized monopolies and were constructed with an integrated architecture (<i>i.e.</i>, one designed for a single carrier – the ILEC), only the ILECs have efficient and cost-effective connections between their loops and switches. Competitors cannot provide service using ILEC loops and non-ILEC switches in the same efficient way. These "natural monopoly characteristics" are at the root of all the CLEC impairments in serving mass-market loops.</p> <p>Moreover, incumbents inherited their customers from decades of monopoly privilege. This means that the incumbents effectively gained 100% share without any meaningful customer acquisition cost.</p>	<p>Can a particular geographic market ever become saturated with switches so that it cannot support more switches? If so, does this imply that the remaining CLECs are now impaired, even if a state commission originally upheld the FCC's initial determination of impairment?</p>

TRIP Task Force Decision Point List – Substantive Issues – Nine Month Case  
 Response Supplied by CompTel on Behalf of Itself and Individual CLECs – September 8, 2003

Issue	Legal Standard from TRO or State Law	CLEC Position	Questions or Factors for State Commissions to Consider
		<p>Thus, from a comparative marketing cost perspective, the only customer acquisition cost the ILECs incur is to “winback” the small fraction of customers that they lose to CLECs. In contrast, CLECs must incur significant customer acquisition costs for each and every line they win and, given the ILECs’ highly aggressive winback programs, (which often include substantially lower rates), the CLECs’ costs must be recovered from the much smaller fraction of lines that CLECs retain. For instance, SBC has publicly announced that its winback rate is over 50%. This effectively doubles CLEC customer acquisition costs in those areas, while the ILEC can dilute its customer acquisition cost across the 90% of the market for which it incurred no cost at all. Customer acquisition costs thus present another substantial economic entry barrier.</p> <p>Sunk costs also create first-mover advantages by creating a chasm between the marginal cost of the incumbent, for which most of its network investment is sunk, and the marginal cost of the entrant, whose network investment are incremental. The difference allows the ILECs to strategically deter competitive entry through aggressive pricing (or by merely signaling to entrants that post-entry competitive pricing will be aggressive). See TRO ¶ 88 (“an entrant that knows that an incumbent has incurred substantial sunk cost may be disinclined to enter a market because the incumbent LEC is likely to drop its prices, possibly to levels below average cost, in response to entry.”)</p>	

TRIP Task Force Decision Point List – Substantive Issues – Nine Month Case  
 Response Supplied by CompTel on Behalf of Itself and Individual CLECs -- September 8, 2003

Issue	Legal Standard from TRO or State Law	CLEC Position	Questions of Factors for State Commissions to Consider
		<p>The ILECs first-mover status also implies that it has been allowed to fully exploit its scale economies to a high degree. Entrants, however, must operate at inefficient scale for long periods of time, placing them at an additional cost disadvantage. See TRO ¶ 86.</p> <p>Market data show that the ILECs' first mover advantages, combined with their nearly ubiquitous ability to compete across all market segments including long distance services (which ILECs can purchase for resale at rates approaching incremental cost), means that there is no realistic opportunity for an individual CLEC to take a very significant share of a particular local market. Consequently, the only path to a competitive local market is one where the advantages of incumbency – the ILECs' integrated architecture and the inherited scale economies – are shared with entrants at rates reflecting their efficient cost.</p>	
<p>IIIF. To what extent are CLECs impaired due to other economic entry barriers, such as supply/demand ratios, that are likely to make market entry uneconomic – either generally or in a particular geographic market(s)?</p>		<p>See responses to IID and E above and IIIG below. In addition, it is evident that there may be areas in which the total demand for local service is too low to support the deployment (or use) of new or existing switches to serve mass-market customers.</p> <p>Further, it is the natural tendency of a monopolist to restrict supply in order to bid up prices and earn higher profits. Thus, while supply in monopoly markets may fall short of demand and create a rich margin, a CLEC will not enter that market unless it is convinced that this margin will endure. See TRO ¶ 88. However, the ILEC's already deployed network can supply the full market demand (even</p>	<p>What levels of supply and demand must be demonstrated for both ILEC and CLEC switching and switching capacity to overcome a presumption of "impairment" in a particular geographic area?</p> <p>Can the demand in a particular geographic market be too low to support more switches?</p>

TRIP Task Force Decision Point List – Substantive Issues – Nine Month Case  
 Response Supplied by CompTel on Behalf of Itself and Individual CLECs – September 8, 2003

Issue	Legal Standard from TRO or State Law	CLEC Position	Questions or Factors for State Commissions to Consider
<p>III.G. To what extent are CLECs impaired due to <u>sunk costs</u>?</p>		<p>the enlarged demand that would exist if it dropped its prices to combat the entrant), so that there will be no unserved high-priced demand left for the CLEC to acquire.</p> <p>Sunk costs and competitive risks play a key role in the economic impairment analysis. TRO ¶ 517. The construction of local networks requires the expenditure of substantial sunk investment. Moreover, all of the entrants' customer acquisition costs and migration costs and a significant portion of their backhaul costs are sunk. Although a significant portion of the costs of deploying switches is sunk, the economic impairment relating to switching for mass-market customers is only a part of the sunk cost analysis. The network architecture description above shows that CLECs must incur significant economic cost penalties compared to the ILEC even if a CLEC's unit costs for switching were the same as for the ILEC. And as described above, the ILECs have substantial sunk costs in their switching and interoffice networks, and thus have a very strong incentive drive out the CLECs through price cuts. Before a CLEC can offer UNE-L-based service, it must build out collocations in each ILEC central office where it wishes to collect customers. These collocation build-out costs are not fungible to other wire centers, and if demand does not materialize, these assets cannot be redeployed; rather, they are sunk. Similarly, the equipment that the CLEC puts into these collocations has substantial engineering and installation costs that cannot be recovered if the CLEC's entry at that central office turns out to be unsuccessful. The</p>	<p>Factor to consider:</p> <ul style="list-style-type: none"> <li>• Fungibility of CLEC facilities, plant and equipment</li> </ul>

TRIP Task Force Decision Point List – Substantive Issues – Nine Month Case  
Response Supplied by CompTel on Behalf of Itself and Individual CLECs -- September 8, 2003

Issue	Legal Standard from TRO or State Law	CLEC Position	Questions or Factors for State Commissions to Consider
		<p>last, but also large, category of sunk costs is the non-recurring charges that the CLEC must incur to collect unbundled loops. These include the internal and external hot cut costs that are specific to collecting each customer's loop, as well as the nonrecurring fees required to establish backhaul transport, all of which are unrecoverable if the CLEC loses a customer to "churn" or cannot maintain enough unbundled loops to load these pre-bought facilities efficiently.</p>	
<p>IIIIH. To what extent are CLECs impaired due to <u>other</u> economic entry or exit barriers?</p>		<p>CLECs using UNE-L face severe difficulties in providing their customers with service quality and installation intervals equivalent to what the ILECs can provide to their own customers (using, as they do, the internal equivalent of UNE-P). This is because of the manual nature of service connects and disconnects necessary to implement a UNE-L service architecture. It is these cost inefficiencies, imposed on UNE-L providers by the ILECs' existing architecture and procedures, that foreclose price competition for mass market providers on an equal cost basis with the incumbent absent UNE-P availability.</p>	<p>Given the total costs to a CLEC of providing service to mass market customers--without purchasing the ILEC's switch at TELRIC pricing--can the CLEC "compete on price" against the ILEC?</p>
<p><b>IV. Operational Impairment</b></p>			
<p>IVA. To what extent are CLECs operationally impaired due to impending switch exhaust?</p>		<p>To the extent that the question relates to ILEC tandem exhaust, the CLEC respondents note that such exhaust has in the past stunted the growth of facilities-based competition. Indeed, the FCC recently found in <i>Core v. Verizon</i>, EB-01-MD-007 (Apr. 23, 2003), that equipment exhaust at Verizon's Southwest Washington DC tandem "had</p>	<p>Factor to consider:</p> <ul style="list-style-type: none"> <li>• Switch capacity, utilization, scalability, upgradeability</li> </ul>

TRIP Task Force Decision Point List – Substantive Issues – Nine Month Case  
 Response Supplied by CompTel on Behalf of Itself and Individual CLECs – September 8, 2003

Issue	Legal Standard from TRO or State Law	CLEC Position	Questions or Factors for State Commissions to Consider
		<p>serious consequences for competitive LECs in the Washington Metropolitan LATA.... Verizon had 54 carrier capacity requests in “hold” status because of the cross-connect exhaust” at the Southwest Washington DC tandem. <i>Id.</i>, ¶ 18.</p> <p>While facilities-based competition ground to a halt during this tandem capacity exhaust, Verizon’s traffic “continued to flow freely, because Verizon did not route its own traffic through the congested Washington Hub, and because the portion of Verizon’s network that did transport Verizon’s traffic had capacity sufficient to allow Verizon to increase its end-user customer base.” <i>Id.</i>, ¶ 19.</p> <p>Because UNE-P traffic flows over the same facilities as Verizon’s traffic, UNE-P carriers were not affected by Verizon’s Southwest DC tandem capacity exhaust. Rather, CLECs using UNE-P avoided unlawful ILEC discrimination by virtue of using the same facilities that the ILEC used for its traffic, rather than the “separate but equal” facilities allocated to CLECs that relied upon physical interconnection with the ILEC network.</p> <p>If CLECs were forced to migrate from UNE-P to a UNE-L strategy, CLECs would require many more points of interconnection at ILEC tandem switches, which would greatly exacerbate the scale and scope of ILEC facilities exhaust problems, like those identified by the FCC in <i>Core v. Verizon</i>. Moreover, the ILEC would incur increased costs if it were required to redesign its interoffice network to respond to a changing traffic pattern created by minutes moving from end-office trunk groups to tandem-switched facilities. To the extent that an ILEC is successful in causing such a network</p>	

TRIP Task Force Decision Point List – Substantive Issues – Nine Month Case  
 Response Supplied by CompTel on Behalf of Itself and Individual CLECs -- September 8, 2003

Issue	Legal Standard from TRO or State Law	CLEC Position	Questions or Factors for State Commissions to Consider
<p>IVB. To what extent are CLECs operationally impaired due to a lack of timely, accurate delivery of loops from the ILEC in sufficient volumes?</p>		<p>rearrangement, the ILEC should be required to absorb any additional costs created by such a change in traffic flow.</p> <p>CLECs are operationally impaired in a UNE-L environment if the customer experience is not as good or better than the customer experience in a UNE-P world today. As a result of the ILECs' legacy monopoly and integrated network architecture, the voice-grade loops that serve mass-market customers are all physically connected, or "hard-wired" to the ILECs' facilities and switches. Therefore, irrespective of the economic impairments described above, CLECs cannot offer switch-based service to mass-market customers unless they have large-scale, dynamic and efficient pre-ordering, ordering, provisioning and repair/maintenance methods/processes to ensure that customers can switch seamlessly between providers. Existing processes are both economically and technically insufficient to meet these needs.</p> <p>CLECs are generally foreclosed from providing service to mass-market loops that are connected to integrated digital loop carrier ("IDLC") equipment, because ILECs are unwilling to unbundle IDLC (an issue does not exist in a UNE-P world because CLECs use all ILEC facilities). In instances where IDLC is present, ILECs will take the consumer off of the fiber/IDLC loop and place them on spare copper if available. But if spare copper is not available, the CLEC often cannot serve this customer at all. Thus, ILECs should be required to unbundle IDLC loops and</p>	<p>Factors to Consider:                      (1) Hot Cut process                      (2) Other OSS and process issues, if applicable.</p>

TRIP Task Force Decision Point List – Substantive Issues – Nine Month Case  
 Response Supplied by CompTel on Behalf of Itself and Individual CLECs -- September 8, 2003

Issue	Legal Standard from TRO or State Law	CLEC Position	Questions or Factors for State Commissions to Consider
		<p>allow CLECs to utilize the full functionality of the ILECs loop facilities.</p> <p>In addition, in a UNE-L environment without access to UNE-P, the CLEC must establish entrance facilities with the ILEC, build collocation cages, place DLC equipment and related transmission equipment in the cage, establish connections between its cages and its switch site and build/test the interconnection network. The long time frames associated with these processes impact the CLEC's ability to effectively and efficiently serve the mass market. Issues surrounding collocation and the ability to augment a collocation cage (i.e. space, power, terminations, etc.) must also be reviewed to ensure that CLECs can gain access to ILEC loop plant quickly and efficiently.</p> <p>Operational issues must be resolved and result in CLECs being able to gain commercially viable access to and utilize the full functionality of the unbundled loop plant of the ILECs.</p> <p>See discussion on loop hot cuts in response to IVC.</p>	
<p>IVC. To what extent are CLECs operationally impaired due to a lack of ILEC hot cut processes in place for mass market loops that provide CLECs with a meaningful opportunity to compete for residential and small business customers?</p>		<p>Scalability and reliability are key in assessing the efficiency and viability of loop hot cut processes. The current manual hot cut processes that are in place today are not capable of handling mass-market volumes. Among other things, current manual processes are not capable of servicing new customer acquisitions and the substantial churn that CLECs experience, largely as a result of ILEC</p>	<p>Questions and Factors to consider:</p> <p><u>Hot cut processes</u></p> <p>(1) What types of hot cuts are in place to migrate residential and mass market customers?</p> <p>(2) Are the processes manual or electronic?</p>

TRIP Task Force Decision Point List – Substantive Issues – Nine Month Case  
 Response Supplied by CompTel on Behalf of Itself and Individual CLECs -- September 8, 2003

Issue	Legal Standard from TRO or State Law	CLEC Position	Questions or Factors for State Commissions to Consider
		<p>winback activities. Although such customer acquisition and churn is readily and routinely managed in a UNE-P environment, it cannot be supported in a UNE-L only environment. Notably, even a 95% success rate on manual cut-overs would result in substantial customer outages: for example, a 95% "success" rate in cutting over one million lines potentially means 50,000 customer outages or premature disconnection of service.</p> <p>Today's hot cut procedures are inadequate for CLECs to serve the "mass market" due to the highly manual nature of the processes, the inability to scale the processes to meet competitive market demand, and the high risk of customer outage or other service problems. In general, ILECs offer both "coordinated" and "non-coordinated" hot cuts. Both varieties are fundamentally manual and require cumbersome steps to identify relevant facilities, pre-test both the ILEC and CLEC facilities and arrangements, and establish the necessary arrangements in the Number Portability Administration Center (NPAC) for number porting. The primary difference in the two scenarios is that in the case of a "coordinated" hot cut, the ILEC and the CLEC are in direct contact at the time the loop is moved from the ILEC switch to the CLEC's network, where in the "non-coordinated" scenario, the ILEC technician moves the loop within a pre-arranged window, and the CLEC completes the migration by activating the number port at the end of the window. Neither of these manual processes is sufficient to meet competitive needs for accuracy, timeliness and completeness at commercially competitive volumes. Today, consumers expect to be able to</p>	<p>(3) Regardless of whether electronic or manual, do the hot cut processes enable customers to switch easily and quickly between ILEC and CLEC facilities-based carriers and switches without undue service disruption on the scale required for mass market customers?</p> <p>(4) If manual, are those manual processes adequate, or should electronic processes be developed?</p> <p>(5) Have all hot cut migration scenarios for mass market customers been identified? Do the answers to any of the questions in this section vary based upon the specific hot cut scenario involved?</p> <p>(6) Are the hot cut processes (and, if applicable - hardware, software, and interfaces) in place for both ILECs and CLECs? Are they functional? Are they scalable? How should the hot cut functionality, capacity and scalability be measured? How can/ should the ILEC demonstrate or "prove" that the hot cut process functions properly? How can/ should the ILEC demonstrate or "prove" that there is sufficient capacity and scalability?</p> <p>(7) How should the timeliness of the ILEC's hot cut process(es) be measured? How can can/should the ILEC demonstrate or "prove" that it can perform hot cuts for mass market customers on a timely basis? What standards should be used?</p> <p>(8) Does the RBOC have FCC or state approved performance measures for hot cuts that could be</p>

TRIP Task Force Decision Point List – Substantive Issues – Nine Month Case  
 Response Supplied by CompTel on Behalf of Itself and Individual CLECs -- September 8, 2003

Issue	Legal Standard from TRO or State Law	CLEC Position	Questions or Factors for State Commissions to Consider
		<p>change their local provider as easily and effectively as they change their long distance provider (i.e. the PIC process). The hot cut process today, involving numerous manual steps, does not provide consumers with this ability.</p> <p>A fundamental limitation inherent in the hot cut processes is that current manual processes generally only address migrations between ILECs and CLECs, and do not provide for a means to facilitate CLEC to CLEC migrations. Migration scenarios involving provision of service by multiple parties, e.g. the ILEC, a CLEC and a DCLEC, are largely untried or inadequately defined. Indeed, essentially no OSS functionality exists for this type of migration.</p> <p>A few ILECs have begun to implement "bulk" manual hot cut processes which allow a CLEC to acquire customers through the use of UNE-P and then, when a sufficient number of customer lines are established in an individual central office, to migrate a larger number of customer lines to the CLEC switch. This process is of little value in a dynamic (mass) market, however. First, and foremost, the bulk migration process assumes that this is a UNE-P to UNE-L transition within one CLEC and that the customer base that is being "transitioned" is relatively static. As with the first two varieties of hot cuts, the bulk process is manual. Processes and time frames/intervals need to be negotiated. Problematic loops (i.e. loops provided over IDLC) are removed from the process upfront leaving them to be dealt with at a later date. Moreover, in the limited circumstances where bulk processes are available they are subject</p>	<p>used – at least on an interim basis? What do those hot cut metrics and business rules measure? Functionality? Timeliness? Other? Are those performance measures sufficient and appropriate on a long-term basis? Do they appropriately apply to mass market customers/entry?</p> <p>(9) What process, hardware, software, or interface upgrades or modifications need to be made for hot cuts for mass market customers? What are the testing and implementation schedules for those upgrades or modifications?</p> <p>(10) Are there 911 implications for the hot cut processes to residential mass market customers?</p> <p><u>Non hot-cut migration process issues</u></p> <p>(1) Are the ILEC's pre-order, order, provisioning, and billing processes and OSS needed to migrate customers electronic or manual?</p> <p>(2) Regardless of whether electronic or manual, do these processes and OSS enable(s) customers to switch easily and quickly between carriers without undue service disruption on the scale required for mass market services?</p> <p>(3) If manual, are those processes and OSS adequate, or should electronic processes and OSS be developed?</p> <p>(4) Have all migration scenarios for mass market customers been identified? Do the answers to any of the questions in this section vary based upon the specific customer migration scenarios involved?</p>

TRIP Task Force Decision Point List – Substantive Issues – Nine Month Case  
 Response Supplied by CompTel on Behalf of Itself and Individual CLECs – September 8, 2003

Issue	Legal Standard from TRO or State Law	CLEC Position	Questions or Factors for State Commissions to Consider
		<p>to severe quantity restriction on the number of migrations that can be performed for all carriers in a given geographic area per day. This is in stark contrast to the virtually unlimited number of customers who can be migrated using UNE-P, and clearly points to the insufficiency of such a process to handle all competitive demand.</p> <p>Thus, even the best manual processes that could be implemented today cannot satisfy the requirements needed to eliminate the CLECs' operational impairment in attempting to compete for mass-market customers. Unless and until commercial volumes of customers can be moved as easily, effectively and reliably as they can be using UNEP or through a PIC change in long distance, operational impairment will continue to exist.</p> <p>Comparability to today's PIC process in terms of quality, efficiency and customer impact is also the appropriate standard to determine the adequacy of any loop migration process.</p> <p>In addition, migration processes between CLECs are not yet well-defined and are largely manual. Process improvements are needed to facilitate mass market migrations, and efforts are underway in several states and at the industry Ordering and Billing Forum (OBF) to develop the needed changes. Progression from manual to electronic processes between CLECs should occur over time as processes are sufficiently developed to allow mechanization and increased volume warrants the investment. Migration scenarios involving provision of service by multiple parties, e.g. the ILEC, a CLEC and a DCLEC, are largely untried</p>	<p>(5) Are the customer migration processes, hardware, software, and interfaces in place for both ILECs and CLECs? Are they functional? Are they scalable? How should the migration functionality, capacity and scalability be measured? How can/ should the ILEC demonstrate or "prove" that there is sufficient and/or adequate functionality, capacity, and scalability?</p> <p>(6) How should the timeliness of the migration process(es) be measured? How can can/should the ILEC demonstrate or "prove" that it can perform migrations on a timely basis? What standards should be used?</p> <p>(7) Does the RBOC have FCC- or state-approved performance measures for customer migrations that could be used – at least on an interim basis? What do those migration metrics and business rules measure? Functionality? Timeliness? Other? Are those performance measures and business rules sufficient and appropriate on a long-term basis?</p> <p>(8) What process, hardware, software, or interface upgrades or modifications need to be made to better enable seamless, timely, accurate customer migrations between carriers, without undue service disruption on the scale required for mass market services? What are the testing and implementation schedules for those upgrades or modifications?</p> <p>(9) Are there 911 implications for the migration processes to residential mass market customers?</p>

**TRIP Task Force Decision Point List -- Substantive Issues -- Nine Month Case  
Response Supplied by CompTel on Behalf of Itself and Individual CLECs -- September 8, 2003**

Issue	Legal Standard from TRO or State Law	CLEC Position	Questions or Factors for State Commissions to Consider
		<p>or inadequately defined.</p> <p>Notably, the hot cut performance metrics currently included in most performance measurement plans are clearly inadequate to eliminate CLEC impairment, especially if CLECs are relegated to operate in a "UNE-L only" environment. Those measures fall far short of the service level required by mass-market customers who expect to be able to change local carriers as easily, quickly and cheaply as they can change long distance carriers.</p> <p>Existing state performance measurement plans and change management/control should also be reviewed and updated to re-address loop migration processes, including, but not limited to hot cuts. While resolution of the issues described above are important to CLECs' continued success in the marketplace, current UNE-P offerings generally address the needs of mass-market entry and ubiquity, and any process contemplated to replace UNE-P must necessarily include its characteristics of cost effectiveness, efficiency and customer impact.</p> <p>An additional level of analysis with respect to line sharing and line splitting must also be conducted. Current ILEC processes, rates and OSS for line splitting are inadequate to allow CLECs to scale their businesses by offering customers a package of both voice and data services. Before line sharing can be transitioned out, state commissions must determine that the processes, rates and OSS for line splitting provide competitors with a meaningful opportunity to compete.</p>	<p>An additional level of analysis must include: Have all of these questions 1-9 been answered as to processes that enable line splitting in the UNE L scenario? To the extent that processes exist today for line splitting, are those processes the same or different for line splitting with UNE L as opposed to UNE P? Do line splitting rates, OSS and processes today give CLECs a meaningful opportunity to compete with ILEC bundled offerings? Do line splitting rates, OSS and processes for line splitting with UNE L provide CLECs with a meaningful opportunity to compete?</p>

TRIP Task Force Decision Point List – Substantive Issues – Nine Month Case  
 Response Supplied by CompTel on Behalf of Itself and Individual CLECs -- September 8, 2003

Issue	Legal Standard from TRO or State Law	CLEC Position	Questions or Factors for State Commissions to Consider
		<p>Line splitting is a simple arrangement that provides two services on a single customer loop, similar to when the ILECs add data services to an existing voice customer. Until the processes and systems that enable line splitting are as seamless and customer friendly as when an ILECs add data services, CLECs' ability to compete in offering packages of voice and data service will be severely restricted. Significant obstacles stand in the way of scalable line splitting at this time. First, each ILEC has a morass of system and process limitations that make line splitting migrations difficult, expensive and, in some cases, service interrupting. For example, the systems and processes for adding UNE-P to a data line or adding data to a UNE-P line often require multiple orders, manual orders, or a combination of both and some threaten service interruption or unreasonably high nonrecurring charges for such migrations. Second, systems and processes that maximize the customer's ability to choose from a wide variety of service providers are simply nonexistent. Customers may wish to change voice providers, change data providers, and drop voice or data service at some time. These consumer choices are not supported by the existing ILEC line splitting systems and processes. Commissions must evaluate ILEC systems and processes to insure that these migrations are timely, seamless to the customer, result in minimal (if any) service interruption, and occur without any negative effects on 911 databases, telephone number retention and other customer impacting aspects of service. Additionally, there are virtually no systems or processes in place to enable line splitting in a UNE-L environment. These</p>	